[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J.

November 7, 1940.

## NGOOI LEE JIN v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 97 of 1940]

*Summary trial—evidence—conflict of testimony of two prosecution witnesses—whether Magistrate can prefer evidence of one witness to that of the other.*

The two principal witnesses for the prosecution in a case of causing death by negligent driving gave evidence which differed in certain material respects. The trial magistrate accepted both witnesses as witnesses of truth, but finally decided to accept the evidence of one of them in preference to that of the other, and convicted the accused.

**Held**, on appeal, that there was no rule of law why the Magistrate should not so decide.

MAGISTRATE'S APPEAL.

*Roland Braddell* (*B. H. Chia* with him) for the Appellant.

*E. N. Griffith-Jones* (Crown Counsel) for the Crown.

**Terrell, Ag. C.J.**—In this case the accused was convicted under section 304 A of the Penal Code of having caused the death of a negro by driving his car negligently. The Court has the advantage of a very careful record of the evidence, and of a very full and careful Judgment, giving all the learned Magistrate's reasons for arriving at his verdict.

These circumstances were also of considerable value to the appellant whose counsel was able to subject the grounds of judgment to a miscroscopic examination, and attack them from various angles.

I will now deal with the principal grounds of appeal.

1. Admittedly the two eye witnesses for the prosecution P.C. 1871, who was on traffic duty at the junction of Coleman Street and North Bridge Road, and Hodgins, who had a bird's eye view of the whole accident from his flat at 16 Meyer Mansons situated at the same junction, differed in certain respects. The learned Magistrate accepted both witnesses as witnesses of truth, but finally accepted the testimony of Hodgins as being an accurate record of what happened.

Mr. Braddell advanced the proposition that in circumstances where a Magistrate believes both witnesses and they contradict one another, the prosecution case has not been established beyond reasonable doubt, and the accused is entitled to an acquittal. No authority was cited in support of this proposition which appears to be quite untenable. The fact is that having two accounts before him which differed in material respects, the learned Magistrate accepted the evidence of Hodgins in preference to that of the P.C., not because he thought the P.C. was a liar, but because he considered him honestly mistaken or inaccurate in his observation or memory. I know of no rule of law which could prevent a Magistrate from so deciding.

2. It is argued that there was no evidence of criminal negligence except that the accused had passed the traffic policeman when the "wings" were against him, and that the Court Inspector had expressly stated in opening his case that it was not suggested that the negligence which caused the death of the man was the same negligence as led to the disobeying of the wing signal.

In my opinion the Inspector's statement was strictly accurate so far as it went, but that is not to say that the improper passing of the traffic post was not an element to be taken into consideration. There was no question that the accused's car caused the death of the negro, but what the prosecution have to establish is a criminal intention,—in this case a high degree of negligence. Such intention can be established by the accused's conduct at or immediately before the event. Under Section 8 of the Evidence Ordinance the accused's previous conduct is expressly made relevant, and under section 14 the existence of a state of mind is also relevant. The latter section is of particular importance with reference to the statement made by the accused to Hodgins when the latter asked him why he was driving at such a speed past the policeman, the reply being that the accused was in a hurry and had an appointment in Tanjong Pagar or Pasir Panjang. Reference may also be made to section 115 of the Evidence Ordinance. The collision occurred within 50 yards of the junction. The time taken to traverse this distance would be just over 4 seconds, if the car was travelling at 20 m.p.h., and just under 4 seconds if the car were travelling at 25 m.p.h. It may be presumed that the state of mind which existed when the junction was crossed persisted at the time of the accident. It is contrary to common sense to suggest that the crossing of the junction against the traffic signal, and the impact with the negro 4 seconds later, were two entirely independent occurrences, unconnected in any way.

In my opinion, therefore, the learned Magistrate was correct in taking the accused's conduct immediately before the collision into consideration. But this was not the only evidence of negligence. If the evidence of Hodgins is accepted, the fact that the car was driven on the wrong side of the road when the road was

clear, and the failure to keep a proper look-out, are themselves indicative of criminal negligence, and are the logical consequences of the accused's previous state of mind.

The accused elected to give no evidence, and his counsel was unable to offer any suggestion as to how the accident occurred, if, as he alleged, the car was being driven at a moderate speed and on its proper side of the road. The road was 49 feet across, the deceased was not running across and the accused's brakes were in good order. On the defence theory the accident could never have happened.

I see no reason, therefore, to question the learned's Magistrate's findings which appear to be consistent with the probabilities. I might add that I do not accept counsel's suggestion that the spot of blood nearest the centre of the road, but well over to the left, is the identical spot where the deceased was struck. According to Hodgins the deceased was thrown some distance by the impact of the collision. His head struck the top of the bonnet and the blood came from his mouth. There must have been some interval of time before any blood could fall. The medical evidence, therefore, is consistent with the evidence of Hodgins that the impact took place when the accused's car was over the crown of the road on the wrong side. This evidence also leads to the conclusion that the car travelled considerably more than 20 feet before it was stopped. I do not wish to question the learned Magistrate's finding that the speed of the car was not excessive, except to remark that such finding was very favourable to the accused. There was ample evidence from which the learned Magistrate might reasonably have found that the speed of the car was excessive in the particular circumstances prevailing.

The degree of criminal negligence necessary to a conviction under section 304 A was fully appreciated by the learned Magistrate. I see no reason for differing from his conclusions.

The appeal will, therefore, be dismissed.

Solicitors for Appellant—*R. C. H. Lim & Co.*

*Appeal dismissed.*

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TERRELL, Ag. C.J.

## REX v. ONG PENG HOCK.

November 7, 1940.

[SINGAPORE MAGISTRATE'S APPEAL No. 61 of 1940]

*Common Gaming Houses Ordinance s. 4 (a)—Occupier of stalls in which illegal games are played.*

The respondent was a director of a company operating an amusement park. The company sublet stalls and the stall-holders allowed illegal games to take place.

**Held,** that the accused was not the occupier of the stalls which the company sublet and that the whole area of the amusement park did not become a common gaming house because a game of darts was illegally carried on in one of the stalls.

MAGISTRATE'S APPEAL.

*E. N. Griffith-Jones* (Crown Counsel) for the Crown.

*A. J. Braga* for accused (respondent).

The facts and arguments sufficiently appear from the judgment.

*Cur. Adv. Vult.*

**Terrell, Ag. C.J.**—The accused was charged under s. 4(a) of the Common Gaming Houses Ordinance with using the New World Amusement Park as a common gaming house. There was an alternative charge under s. 4(b) with permitting the place to be so used. On each of these counts the accused was charged as the occupier of the New World Amusement Park.

There was a second alternative charge under s. 4 (c) that the accused assisted in the management of a common gaming house.

Although the word "occupier" is not mentioned in the charge under s. 4(c), the prosecution did not attempt to prove that the accused actually took any part in the management of a stall where a ring-throwing game was in progress. The prosecution relied on the presumption arising under s. 14 of the Ordinance, and such presumption only arises against "an occupier". It was accordingly an essential part of the prosecution case in all the charges that the accused was the occupier, and they sought to establish that he was the occupier by showing that a company of which he was a director was the lessee of the amusement park, and that the Municipal licences and the licence under the Theatres Ordinance were in his name. It is true that exhibit "C", the counterfoil of the licence of the 28th February 1940, states it to be for the "Ghost Train and Side Shows" at the New World, but I cannot see that a stall at the New World can possibly come under any of the definitions of a theatrical performance. Possibly, the Ghost Train falls under one or other of the definitions, but the stalls certainly do not. In my opinion, therefore, a stall does not require a licence under the Theatres Ordinance.